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COMMENT ON RECENT DECISIONS

CONTRACTS—COMPROMISE AND SETTLEMENT—EMPLOYEE RECEIVING AND CASHING CHECKS IN PAYMENT OF SERVICES RENDERED HELD ESTOPPED TO CLAIM ADDITIONAL AMOUNTS.—*Knight v. Missouri Pacific Railroad Co.*, 275 S. W. 704 (1925 Ark.)

Plaintiff, an employee, brought suit against defendant, a railroad corporation, to recover alleged monthly shortages covering a considerable length of time, which company refused to pay him. Plaintiff had received and cashed checks issued regularly each month and marked "for services rendered during the month," but he claimed extra amounts alleged to be due for overtime during the periods covered by these checks. *Held*, that since the employee received and cashed said checks which specified that they were in payment of services rendered during that particular month, that said Employee was estopped to claim additional amounts for shortage and overtime during such months.

Cases in which debtors have undertaken to force a settlement upon their creditors by sending a check in full discharge of a disputed account have given rise to a question upon which there is a wide conflict of opinion. In *Nassoïy v. Tomlinson*, 148 N. Y. 326, a leading case upon this question, the following rule is laid down: "The plaintiff could only accept the money as it was offered, which was in satisfaction of his demand. He could not accept the benefit and reject the condition, for if he accepted at all, it was *cum onere*. When he indorsed and collected the check . . . it was the same in legal effect as if he had signed a receipt, because acceptance of the check was a conclusive election to be bound by the condition upon which the check was offered." And to this effect is the weight of authority.

It was held in the following cases that a creditor who accepts the payment of the amount which the debtor admits to be due, even though protesting that he takes it on account, is barred from further action on the alleged debt: *Nassoïy v. Tomlinson*, 148 N. Y. 326; *Ostrander v. Scott*, 161 Ill. 339; *Tanner v. Merrill*, 108 Mich. 58; *Neeley v. Thompson*, 68 Kan. 193; *Treat v. Price*, 47 Neb. 875; *Hull v. Johnson*, 22 R. I. 66; *Cunningham v. Standard Construction Co.*, 134 Ky. 198; and *Pollman Bros. v. St. Louis*, 145 Mo. 651.

But in the following cases it was held that such a creditor was not barred: *Demeules v. Jewel Tea Co.*, 103 Minn. 150; *Seattle, Renton and Southern R. R. v. Seattle-Tacoma Power Co.*, 63 Wash. 639; and *Prudential Insurance Co. v. Cottingham*, 103 Md. 319.

The decision in most of these cases was made to turn upon the question whether payment of the amount admitted to be due without dispute did or did not constitute a valid consideration for the discharge of the balance of the debt about which there was a dispute.

W. J. P., '27.

CORPORATIONS—SALARIES VOTED TO OFFICERS BY THEMSELVES ACTING AS DIRECTORS OF THE CONCERN.—*McKey v. Swenson et al.*, 232 Mich. 505, 205 N. W. 583, Oct. 27, 1925.

The plaintiff, as trustee in assignment, brings suit against the defendant, who had been an officer and director of the concern assigned, for salaries voted him by a board of directors which consisted of the officers of the concern. The defendant and others constituted the majority of the stockholders of the concern; elected themselves directors, and later officers of the concern—voting themselves salaries. As the business of the concern increased during the war, they steadily increased their own salaries to an unreasonable amount. After the war ended and the profits fell off, they again decreased their salaries commensurate, they thought, with the decrease in the profits. *Held* that when directors of a concern pass resolutions increasing their own salaries, the burden of proof is cast upon them to show that such resolutions were fair and reasonable. *Held* that large profits were not a ground for high salaries, as the profits of a business rightfully belong to the stockholders; and such action by the directors, even though they constituted the majority stockholders, was void. As the defendant failed to show that the salary received was reasonable or what would have constituted a reasonable salary, the Court refused to adjust the claim upon quantum meruit, and commanded all money received to be returned.

No case of such singular facts has ever arisen in Missouri. However, the law seems fairly well settled that a resolution in favor of an officer of a concern is invalid when the vote of the officer as director of the concern was necessary to carry the resolution. *Ward*